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in a residence district was upheld. The court said: "The question is not whether the establishment of the hospital would place the occupants of the adjacent dwellings in actual danger of infection, but whether they would have reasonable ground to fear such a result, and whether, in view of the general dread inspired by the disease, the reasonable enjoyment of their property would not be naturally interfered with by the bringing together of a considerable number of cancer patients in this place." To the same general effect are *Baltimore v. Fairfield Imp. Co.*, 87 Md. 352, where the placing of a leper for care and restraint in a residence neighborhood was enjoined; *Everett v. Paschall*, 61 Wash. 47, where it was held, partly, at least, under the influence of a statute, that the operation of a sanitarium for the treatment of pulmonary tuberculosis in a residence neighborhood was restrained, fear, very real though unfounded and unreasonable, on the part of the neighbors being considered sufficient to make out a case for relief. In this connection the statement by LORD HARDWICKE in *Anon.*, 3 Atk. 750, that "the fears of mankind, though they may be reasonable ones, will not create a nuisance," is interesting. *Board of Health v. North American Home*, 77 N. J. Eq. 464, very like the principal case in the character of disease treated, is in accord therewith.

PUBLIC UTILITY RATES—OBLIGATION OF CONTRACT RULE AS AGAINST THE COMPANY.—Webster in his dramatic appeal which suffused with tears the eyes of the great Chief Justice, and led to the decision in the *Dartmouth College Case*, 4 Wheat. 526, that a corporate charter is a contract, the obligation of which cannot be impaired without violating the constitution of the United States, saw only his beloved college, "one of the lesser lights in the literary horizon," which an adverse decision might put out. It is safe to say that neither he nor the Chief Justice, nor anyone else present on that occasion saw in the sweep of that decision how relatively insignificant on that day were the interests of Dartmouth College, or "all those great lights of science which for more than a century have thrown their radiance over our land." Actually that decision was of small moment to Dartmouth College, or to all the other educational institutions of the land. It was of tremendous importance in other directions not dreamed of by the actors in that historic scene. It came into full vigor only when the decision of *Munn v. Illinois*, 94 U. S. 113, made way for regulatory measures by states and municipalities over public utilities. As a result not a few of these have found themselves incumbered and embarrassed by contract rights and privileges freely and easily, and sometimes corruptly, granted to public service corporations by one generation, which the next would fain restrict or withdraw. Especially has this been the case with provisions as to the charges to be paid by the public for the service.

—These agreements were often between the utilities and municipal and other subordinate bodies politic. Recent decisions that rate making is a legislative function that might be lodged with a municipality, but only by specific terms showing such grant, have enabled municipalities to escape restrictions they had assumed without this grant of power, and they have been glad to take

advantage of the way of escape from the burdensome agreements of their representatives. *Milwaukee Electric Ry. Co. v. R. R. Com. of Wis.*, 238 U. S. 174. So long as the rate revision was downward the public enjoyed the rule. But chickens tend to come home to roost, and this rule allowing a legislature to override an agreement made by a municipality is doing it. The last two years has seen an unprecedented upward turn in the curve of prices and rates. Federal commissions are permitting increases of state-fixed rates, 16 MICH. L. REV. 379, and state commissions are raising municipality-fixed rates. This revision upward, in the face of charter agreements, is not so agreeable to the public. The Supreme Court in *Englewood v. Denver and South Platte Ry. Co.*, U. S. Adv. O., Jan. 7, 1919, page 149, upheld the decision of the Colorado Supreme Court "that this town, at least, deriving its powers from legislative grant, could make no contract of this sort that was not subject to control by the legislature; that the Public Utilities Commission had been authorized by the legislature to regulate the matter in controversy; that it had done so; and that this proceeding should be dismissed." The result is that many municipalities seem to be in a position where their charter contract with public utilities is valid against, but not for them. The war conditions may soon pass, but if not the bigger question is not far away, viz., the effect against the state itself of charter provision as to rates which do not yield a fair return, or any return, on the value of the property devoted to a public use. Whatever agreements may have been made, public utilities cannot be permanently operated at a loss. What will become of these charter-fixed rates?

PUBLIC OFFICERS—RECESS APPOINTMENT—LIMITATION ON EXECUTIVE'S POWER.—The governor of Pennsylvania forwarded to the state senate the name of Daniel F. Lafean for confirmation as commissioner of banking for the regular term. The senate rejected the nomination and shortly after the final adjournment of that body the governor appointed Lafean to fill the vacancy in the office and to serve until the end of the next session of the senate. Lafean entered on the duties of his office, and the payment of the salary being refused him brought mandamus to compel the auditor general and state treasurer to approve and pay him the salary attached by law to the office. The defendants appealed from the decision of the trial court awarding a peremptory writ and the Supreme Court of Pennsylvania, with a court divided four to three, affirmed the decision. *Commonwealth ex rel Lafean v. Snyder*, (Pa., 1918), 104 Atl. 494.

The constitution of Pennsylvania contained the following common state constitutional provisions: The Governor "shall nominate, and, by and with the advice and consent of two-thirds of all the members of the Senate, appoint * * * such * * * officers of the commonwealth as he is or may be authorized by the Constitution or law, to appoint; he shall have the power to fill all vacancies that may happen, in offices to which he may appoint, during the recess of the Senate, by granting commissions which shall expire at the end of their next session; * * * if the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Senate, before